

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YAO YANG and ZHENG BAO FANG,

Petitioners,

v.

A. NEIL CLARK, et al.,

Respondents.

CASE NO. C06-1023-TSZ-JPD

REPORT AND
RECOMMENDATION

I. INTRODUCTION AND SUMMARY CONCLUSION

Petitioners Yao Yang and Zheng Bao Fang, husband and wife, are currently detained pursuant to final orders of removal at the Northwest Detention Center in Tacoma, Washington. On July 25, 2006, petitioners, proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 8 U.S.C. § 2241, challenging their final orders of removal to the People's Republic of China. (Dkt. #4). Petitioners request that the Court stay any further proceedings so that they may file applications for asylum and withholding of removal. Respondents have filed a Return and Status Report and Cross-Motion to Dismiss, arguing that the Court lacks jurisdiction to hear petitioners' claims under the REAL ID Act of 2005. (Dkt. #12).

Having carefully reviewed the entire record, I recommend that petitioners' habeas

1 petition (Dkt. #4) be DENIED and that respondents' motion to dismiss (Dkt. #12) be
2 GRANTED.

3 II. BACKGROUND AND PROCEDURAL HISTORY

4 A. Yao Yang

5 Petitioner Yao Yang is a native and citizen of the People's Republic of China. (Dkt. #13
6 at R119). He claims to have entered the United States at New York, New York, on or about
7 November 19, 1992, using a forged Chinese passport. (Dkt. #13 at R35). On November 3,
8 1993, petitioner filed a form I-589 Request for Asylum with the former Immigration and
9 Naturalization Service ("INS"). (Dkt. #13 at R27-35). During his interview at the asylum
10 office, petitioner admitted his alienage and deportability. (Dkt. #13 at R25-6). The asylum
11 officer determined that petitioner was not eligible for asylum and referred his case to an
12 Immigration Judge ("IJ"). *Id.*

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14 On June 3, 1996, the INS issued an Order to Show Cause, placing petitioner in
15 deportation proceedings and alleging deportability for entering the United States on November
16 19, 1992, without inspection. (Dkt. #13 at R166). On February 12, 1997, following a merits
17 hearing, the IJ denied petitioner's application for asylum and withholding of removal, but
18 granted voluntary departure. (Dkt. #13 at R38, R92-102). Petitioner appealed the IJ's decision
19 to the Board of Immigration Appeals ("BIA"). (Dkt. #13 at R104-106). On February 27, 1998,
20 the BIA affirmed the IJ's decision. (Dkt. #13 at R112-13). Petitioner failed to voluntarily
21 depart the United States.

22 On July 9, 2002, petitioner filed a Motion to Reopen with the BIA. (Dkt. #13 at R126).
23 The BIA denied that motion on August 23, 2002. (Dkt. #13 at R167). On June 6, 2006,
24 petitioner was arrested in Anchorage, Alaska. Petitioner has refused to complete an application

1 for travel documents to China, and on June 9, 2006, petitioner was served with a Warning for
2 Failure to Depart, notifying him of the consequences of his failure to cooperate in obtaining
3 travel documents for his removal. (Dkt. #13 at R143). On July 25, 2006, petitioner jointly filed
4 with his wife the instant habeas petition and an emergency motion for stay of removal. (Dkt.
5 #4).

6 B. Zheng Bao Fang

7 Petitioner Zheng Bao Fang is a native and citizen of the People's Republic of China. On
8 December 14, 1999, she entered the United States at Los Angeles International Airport without
9 any travel documents. (Dkt. #13 at R73). At the airport, petitioner told immigration inspectors
10 that she had come to the United States to look for a job, and indicated a fear of being returned
11 to China because she would not be able to pay the \$6,000 it took for her arrangements to the
12 United States. (Dkt. #13 at R73). The inspectors determined that petitioner was inadmissible
13 under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"), but referred
14 her to an asylum officer for a "credible fear" interview pursuant to INA § 235(b)(1). *Id.*

15 At the credible fear interview on December 21, 1999, an asylum officer found that
16 petitioner had demonstrated a credible fear of persecution. (Dkt. #13 at L21). The same day,
17 petitioner was served with a Notice to Appear, placing petitioner in removal proceedings and
18 charging petitioner with removability pursuant to INA § 212(a)(7)(A)(i)(I), because petitioner
19 was not in possession of valid documents at the time of her entry. (Dkt. #13 at L26).

20 On January 12, 2000, petitioner appeared before an IJ, at which she requested time to
21 obtain counsel. (Dkt. #13 at L29). On January 27, 2000, petitioner was released from custody
22 on her own recognizance and venue was changed to New York, New York, where she was
23 planning on staying with her brother. (Dkt #13 at L30-32).

1 On February 25, 2000, petitioner appeared, with counsel, and the case was scheduled for
2 hearing. (Dkt. #13 at L48-49). On June 2, 2000, a merits hearing on petitioner's asylum
3 application was set for November 16, 2000. (Dkt. #13 at L235). Petitioner's counsel filed
4 additional evidence on September 15, 2000. (Dkt. #13 at L195). However, neither petitioner
5 nor her counsel appeared for the merits hearing, and petitioner was ordered removed in absentia
6 on November 16, 2000. (Dkt. #13 at L254).

7 On June 8, 2006, petitioner was arrested by the United States Immigration and Customs
8 Enforcement ("ICE") in Anchorage, Alaska. (Dkt. #13 at R117-18). On or about July 15, 2006,
9 petitioner, proceeding through counsel, filed a motion to reopen her removal proceedings with
10 the New York Immigration Court which remains pending. (Dkt. #13 at L264-65). On July 25,
11 2006, petitioner jointly filed with her husband the instant habeas petition and an emergency
12 motion for stay of removal. (Dkt. #4).

13 On July 26, 2006, the Court entered a temporary stay of removal pending adjudication of
14 petitioners' habeas petition. (Dkt. #6). Respondents filed a statement regarding the stay of
15 removal indicating that they do not oppose a temporary stay of removal while the habeas
16 petition is reviewed. (Dkt. #11). On August 28, 2006, respondents filed a return and status
17 report and motion to dismiss. (Dkt. #12). On September 12, 2006, petitioners filed a motion to
18 assign counsel and motion for extension of time to file a response to respondents' motion to
19 dismiss. (Dkt. #14). The Court denied petitioners' motion to assign counsel, but granted
20 petitioners an extension of time until October 16 to file a response brief. (Dkt. #15). Petitioners
21 did not file a response. On October 20, 2006, respondents filed a reply. (Dkt. #16). The
22 habeas petition and motion to dismiss are ready for review.
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Petitioners have filed a petition for writ of habeas corpus because they “want to see [an] Immigration Judge in order to file for Asylum, [and] withholding of removal.” (Dkt. #4 at 1-2). Petitioners’ habeas petition is a judicial challenge to their final orders of removal. Accordingly, the Court lacks subject matter jurisdiction to consider their claims.

IV. CONCLUSION

DATED this 2nd day of February, 2007.

REPORT AND RECOMMENDATION
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